

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

* * * * * * * * * * * * * * * * *
UNITED STATES OF AMERICA, * CRIMINAL NO. 7:20-CR-00004
Plaintiff, * OCTOBER 22, 2020 11:14 A.M.
* SENTENCING VIA VIDEOCONFERENCE
* VOLUME I OF I
vs. *
*
JAMES ROBERT BANKS, * Before:
Defendant. * HONORABLE ELIZABETH K. DILLON
* UNITED STATES DISTRICT JUDGE
* WESTERN DISTRICT OF VIRGINIA
* * * * *

APPEARANCES:

For the Plaintiff: DANIEL P. BUBAR, ESQUIRE
KARI KRISTINA MUNRO, ESQUIRE
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Proceedings recorded by mechanical stenography,
transcript produced by computer.

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1 (Court convened at 11:14 a.m.)

2 THE COURT: Good morning, Mr. Banks. Can you hear
3 me?

4 THE DEFENDANT: Yes, ma'am, I can hear you.

5 THE COURT: Can you see me?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Are you ready to start?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Then the United States District Court for
10 the Western District of Virginia is now in session. My name
11 is Elizabeth Dillon. I am the judge in this case.

12 Ms. Davis, if you would call our case, please.

13 THE CLERK: *United States of America versus James*
14 *Robert Banks*, Criminal Action Number 7:20CR4.

15 THE COURT: And first I'll note that everyone,
16 including Mr. Banks, is appearing today by videoconference for
17 the sentencing hearing.

18 And, Mr. Beers, by statute the Court is required to
19 make a specific finding that the sentencing in this case
20 cannot be further delayed without serious harm to the interest
21 of justice. Would you like to speak to that?

22 MR. BEERS: No. I would agree, Judge. I think
23 Mr. Banks would like to go ahead and get sentenced and find
24 his place in the federal system rather than wait any longer.
25 It doesn't look like the pandemic is going to be over in the

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1 next few weeks. We would like to go ahead. I think he has
2 signed a video consent that we have filed with the Court.

3 THE COURT: Very well. No objection by the
4 government, Mr. Bubar?

5 MR. BUBAR: No, ma'am, Your Honor. I'm very
6 appreciative of everyone moving forward on this and look
7 forward to doing so.

8 THE COURT: Very well. Then let me next describe the
9 arrangements for his hearing.

10 Mr. Banks is appearing by video link from the Roanoke
11 City Jail, and everyone else is also participating by
12 videoconference.

13 And, Mr. Banks, on your screen I'm not sure if you
14 can see a gallery view or if you just see the person who's
15 speaking. But participating in this are Ms. Davis, who is our
16 courtroom deputy clerk; myself, of course; your counsel,
17 Mr. Beers. There's a blank space for a public line, which
18 I'll explain in a moment. Mr. Bubar, who is the U.S.
19 attorney, and Ms. Munro, I believe, is in the room with him.
20 She's an assistant U.S. attorney. Ms. Webb is our court
21 reporter. Mr. Ridgeway is the probation officer, and then
22 Mr. Martel is my law clerk.

23 If anyone at any time has any trouble with the video
24 or audio connection, if you can't see or hear what's
25 happening, please speak up, interrupt me, wave your hand,

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1 whatever you need to do and we'll stop the proceeding and take
2 care of those issues.

3 Also, if you need to have something repeated, just
4 let me know and I'll repeat myself or have someone else repeat
5 what they've said.

6 I note the Court's prohibition on broadcasting and
7 photographing hearings still applies. You'll see the
8 recording button is on. That's for court reporter purposes
9 only.

10 Also, Zoom has a chat feature which allows
11 participants in this hearing to send text messages to one
12 another during this hearing. Please do not do so thinking
13 that that's a confidential communication, because all of those
14 chats at the end of the hearing will be sent to the host of
15 the hearing, Ms. Davis.

16 And, of course, Mr. Banks, you have the right to a
17 public hearing, and the public has a right to attend hearings.
18 And this hearing has been listed on the Court's public
19 calendar. We've also listed a telephone number, so any
20 members of the public who wish to call in and listen to this
21 hearing may do so on that public line, and that's why we have
22 the square for the public line.

23 And, Mr. Banks, I note that you have a right to be
24 physically present in open court for a sentencing hearing, but
25 you can waive that right, and know that we're experiencing a

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1 worldwide epidemic caused by the coronavirus. The President
2 of the United States and the Governor of the Commonwealth of
3 Virginia have declared states of emergency. And Congress
4 passed an emergency statute that permits defendants in certain
5 criminal cases to appear by video or telephone conference.
6 And the judicial conference of the United States and the chief
7 judge of this court have concurred in that.

8 Our normal procedure, of course, would be to all meet
9 in the courtroom, in person, but we're attempting as best we
10 can to protect the health and safety of everyone involved and
11 allow the basic functions of the Court to go forward without
12 delay.

13 Given all of that, and I understand you've signed a
14 waiver, do you wish to go forward by videoconference today,
15 Mr. Banks?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And do you understand that you have a
18 right to be physically present in open court?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And do you understand why you're not
21 physically present in court today?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Mr. Beers, can you confirm that you went
24 over those rights with your client?

25 MR. BEERS: Yes.

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1 THE COURT: It is indeed the finding of the Court
2 that further delay would seriously harm the interest of
3 justice because Mr. Banks has been incarcerated since the
4 beginning of this year. We still have continued numbers of
5 persons diagnosed with the coronavirus, so there's a need to
6 protect the health and safety of persons involved. And if we
7 go forward with sentencing, as Mr. Banks wishes to do, he can
8 be sooner transferred, if he's incarcerated, to the Bureau of
9 Prisons, which would allow him to participate in more
10 programs.

11 And so I do find that he is competent and has
12 knowingly and voluntarily waived his right to appear
13 physically, and knowingly and voluntarily agreed to proceed by
14 videoconference.

15 I further find that the measures taken to provide
16 public access to this proceeding are reasonable under the
17 circumstances.

18 So I'll accept his waiver and we will proceed to
19 sentencing.

20 And I note that with regard to sentencing we're here
21 for two purposes. The first is for the Court to make a formal
22 announcement as to whether it accepts the plea agreement which
23 was previously taken under advisement, and then for
24 sentencing.

25 Mr. Bubar, is the United States ready to proceed?

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1 MR. BUBAR: Yes, Your Honor.

2 THE COURT: And, Mr. Beers, is Mr. Banks ready to
3 proceed?

4 MR. BEERS: Yes, Your Honor.

5 THE COURT: And, Mr. Banks, I did explain to you at
6 your change of plea hearing that I was taking your plea
7 agreement under advisement pending receipt of that presentence
8 investigation report which has been prepared, and I have
9 received and reviewed that.

10 And I note, Counsel, that for any case where there is
11 a binding plea agreement and a sentencing range that is
12 outside the guideline range, I must determine whether it's
13 outside that range for justifiable reasons and then ask --
14 well, and then make that determination.

15 And I note in this case -- so I look to that advisory
16 guideline range in determining that reasonableness, and I note
17 in this case that we have objections to the advisory guideline
18 range. So I think we first need to determine that advisory
19 guideline range before the Court determines whether the
20 binding range is outside the advisory guideline range for
21 justifiable reasons.

22 But let me first note, Mr. Banks, I want to make sure
23 you know that at any time during this hearing if you need to
24 speak with your attorney confidentially, or if he needs to
25 speak with you, all you need to do is ask me and then

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1 Ms. Davis will put you in a separate room where you --
2 separate video room where you can have a confidential
3 conversation with each other.

4 So will you let me know, Mr. Banks, if you need to
5 speak with Mr. Beers?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And I know Mr. Beers will let me know if
8 he needs to speak with you.

9 So let's first talk about -- well, let me resolve one
10 other issue before we begin. Mr. Banks, at the time of your
11 plea, you told me you were satisfied with Mr. Beers'
12 representation of you. Do you remain fully satisfied, sir,
13 with his advice and representation?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right, then. Then let's see what
16 outstanding objections we have to the presentence
17 investigation report with regard to calculation of the
18 advisory guideline range. I understand there was an objection
19 to the plus-two enhancement for a firearm. Is that correct,
20 Mr. Beers?

21 MR. BEERS: (Indiscernible due to audio issues.)

22 THE COURT: Mr. Beers, you're echoing.

23 MR. BEERS: (Indiscernible due to audio issues.)

24 THE COURT: No, you're still -- I'm getting -- I
25 don't know what's causing that, but it's very difficult to

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1 hear you. There's a loud echo.

2 MR. BEERS: What about right now?

3 THE COURT: That's good.

4 MR. BEERS: Okay. I think I just have to remain
5 super still or something. I'll do that.

6 THE COURT: Okay.

7 MR. BEERS: So, yes, Your Honor, we object to that
8 firearm enhancement.

9 THE COURT: All right. And I've read the reasons for
10 your objection.

11 Mr. Bubar, are you arguing on behalf of that firearms
12 enhancement? It appeared that perhaps the United States was
13 not going to make an argument in that regard.

14 MR. BUBAR: We are not arguing in this instance, Your
15 Honor. We appreciate its application originally by the
16 probation office, but feel that it is -- the evidence to
17 support it is a bit attenuated with regard to specificity of
18 firearms that Mr. Banks may have previously possessed and how
19 that really played into or affected the underlying charge and
20 plea agreement in this case. So we are not offering any kind
21 of evidence in support of it today, and that's where the
22 government is coming from, Your Honor.

23 THE COURT: All right. Given that and the vagueness
24 of the timing of the observation of a firearm and whether it
25 was actually possessed or not, then the Court will sustain the

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1 objection to the plus two for the firearm enhancement and will
2 not apply that.

3 Mr. Beers, did the defendant have any additional
4 objections? And then we'll get to objections by the United
5 States.

6 MR. BEERS: No, Your Honor.

7 THE COURT: Mr. Bubar, it appeared that the United
8 States was arguing that there should have been a plus-two
9 enhancement for obstruction of justice; is that correct, sir?

10 MR. BUBAR: Your Honor, we would like to put on
11 evidence, certainly, that goes towards obstructive behavior
12 and witness intimidation by the defendant.

13 In our view, we stand by the range that is in the
14 plea agreement for reasons that I'm happy to articulate.
15 We're not putting on any official request for additional
16 enhancements to be applied, but certainly want to argue about
17 the conduct that has to do with Mr. Banks' behavior even after
18 he entered his guilty plea with the Court, and that's
19 continued on up until about a week and a half ago. So we are
20 very interested in putting that before the Court as to the
21 history, characteristics, and conduct in this case.

22 But, from our perspective, counsel is in favor of a
23 high-end sentence. We do not -- we are not trying to get out
24 of or have the Court somehow reject or get out of the range
25 that is contemplated by the parties in this case.

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1 THE COURT: Well, and, of course, the Court has an
2 obligation to calculate the appropriate advisory guideline
3 range regardless of the plea agreement. So it's my
4 understanding that you are not asking for a plus-two
5 enhancement for obstruction under 3C1.1; is that correct?

6 MR. BUBAR: That's correct, Your Honor.

7 THE COURT: All right. Because if you were doing
8 that, then I was going to question whether there should be
9 acceptance of responsibility also.

10 But you're not taking the position that he should not
11 receive acceptance of responsibility, are you?

12 MR. BUBAR: It certainly makes the quantum a little
13 different; I'll say that. But it's a balancing test. He's
14 come in early, he's saved the government from having to
15 supersede the indictment against him, so we are not -- we
16 would like to put on the evidence in this matter, but we are
17 not suggesting he should not receive acceptance of
18 responsibility in a formal sense, Your Honor.

19 THE COURT: All right. Very well. Thank you,
20 Mr. Bubar. I appreciate that.

21 So then it appears, Counsel, that everyone would
22 agree that the total offense level would be a 27, with a
23 criminal history category of VI, for an advisory guideline
24 range of 130 to 162 months.

25 Is that accurate, Mr. Bubar?

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1 MR. BUBAR: Yes, Your Honor, I believe that is
2 precisely accurate.

3 THE COURT: All right. And Mr. Beers?

4 MR. BEERS: Yes, Your Honor. Yes, that's accurate.

5 THE COURT: Okay. All right. And our binding range
6 pursuant to the plea agreement is 96 to 132 months.

7 So at this time I'll ask if any party has any
8 evidence with regard to acceptance of the plea agreement, or
9 if you just have argument?

10 Mr. Bubar.

11 MR. BUBAR: We don't have any evidence with regard to
12 the acceptance of the plea agreement. We do have argument and
13 two exhibits we would like to proffer with regard to making
14 our sentencing recommendation, Your Honor.

15 THE COURT: Mr. Beers, do you have any evidence with
16 regard to acceptance of the plea agreement?

17 MR. BEERS: No, Your Honor.

18 THE COURT: And right now I'm just talking about --
19 just trying to determine whether I accept that plea agreement.
20 So just trying to determine if there are justifiable reasons
21 that the binding range is outside the advisory guideline
22 range.

23 So I'll ask for argument with regard to that at this
24 time, Mr. Bubar.

25 MR. BUBAR: Thank you, Your Honor. As I've already

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1 stated and as the government stated in its papers, this is a
2 somewhat unique situation we find ourselves.

3 There are not many defendants who likely come before
4 you in a narcotic space who effectively are willing to, you
5 know, plead to additional charges, which is sort of what we're
6 working to do here. He's not pleading to a truly additional
7 charge, but conduct is being contemplated herein for the 1- to
8 3-kilogram range of heroin without making the government
9 supersede.

10 And we were also in a situation where for the months
11 of parts of May, June -- excuse me, April and May, and maybe
12 part of June where we were not regularly meeting with grand
13 juries, we have taken this into account and have provided
14 Mr. Banks with an opportunity to plead to the (c) (1) (C) range.

15 We would ask the Court to accept that and find that
16 it is appropriate. It does capture, I would point out, a
17 portion of a several-month range that is overlapping with the
18 properly newly calculated guideline range.

19 And for those reasons, we would ask that you accept
20 the plea agreement, Your Honor.

21 THE COURT: Very well. Mr. Beers, any argument?

22 MR. BEERS: No, Your Honor. I would echo what
23 Mr. Bubar said.

24 Effectively what happened here, Judge, is this
25 gentleman has been cooperative from the beginning. Mr. Bubar

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1 didn't mention this, but this gentleman even waived asking for
2 a bond hearing. He's been very realistic. He didn't even
3 make the government put on evidence to detain him. He just
4 said, "I don't need a bond. I'm going to jail. I've been
5 caught, and I don't need a superseding indictment. If they
6 said they can supersede, they can prove 1 to 3 kilograms,
7 okay, I'll just plead." He understood the deal; we're going
8 to handle this through relevant conduct. That saved the
9 government a bunch of work. They didn't have to call in a
10 grand jury during the COVID crisis.

11 So as far as obstruction -- well, they're not arguing
12 obstruction. This is sort of obstruction like in their minds.

13 I would just point one thing out, Judge. And I don't
14 know if the Judge has read these e-mails they want you to
15 read. We don't have any problem if the Judge reads them, but
16 the big one, the one that's really the lion's share of their
17 claim of obstructive conduct or behavior, they knew about.
18 They knew about before they entered this plea agreement. So
19 for them now to come back later and make some noise that he's
20 been obstructive is not fair. They knew about this e-mail,
21 which is not obstructive, but they knew about it on the way
22 in.

23 So, Judge, did he negotiate a good deal? Yes. But
24 it's not that far out of range, and we would ask the Court to
25 accept it for many of the reasons the government has voiced.

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1 Thank you.

2 THE COURT: Thank you, Mr. Beers.

3 The Court does formally accept Mr. Banks' plea
4 agreement with the government. I do note that the advisory
5 guideline range and the binding range in the plea agreement
6 overlap in part. I also note that it appears that this plea
7 agreement was reached in an effort to avoid having to get a
8 superseding indictment, and it certainly contemplates -- the
9 plea agreement contemplates a larger amount of drugs than
10 Mr. Banks was charged with --

11 MR. BEERS: Thank you, Judge.

12 THE COURT: -- and was the product of negotiations by
13 reasonable and professional counsel.

14 I also note with regard to the agreement to dismiss
15 the remaining count that the count to which Mr. Banks pled
16 guilty adequately reflects the seriousness of the offense
17 behavior, so accepting the agreement won't undermine the
18 purposes, the statutory purposes of sentencing or the
19 sentencing guidelines.

20 So I will accept the plea agreement. I do find that
21 it's reasonable and mutually beneficial to all parties.

22 So we will go forward with the sentencing hearing,
23 with the Court having accepted the binding plea agreement with
24 a binding sentencing range of 96 to 132 months.

25 I have reviewed the presentence investigation report

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1 as indicated, I've received the sentencing memos, and I've
2 also reviewed the documents and letters that were submitted to
3 the Court.

4 At this time, does either party have any other
5 documents or correspondence for the Court?

6 Mr. Bubar?

7 MR. BUBAR: Yes, Your Honor. We have two exhibits
8 that we have submitted to the Court, through the clerk, for
9 review and consideration. I will reference them if the Court
10 accepts them.

11 The first is a February 18th of 2020 e-mail that
12 turned into a Facebook post called Natasha's post. That would
13 be Exhibit 1.

14 And Exhibit 2 is an email, a back-and-forth e-mail
15 with an Ebony Saunders and James Banks. We would also like to
16 reference that in our argument.

17 So the government would proffer those two exhibits,
18 in addition to making arguments.

19 THE COURT: Mr. Bubar, what was the date of that
20 second e-mail?

21 MR. BUBAR: I'm sorry. Yes, October 10th of 2020.
22 One was sent at 1:46 p.m., then and the follow-up e-mail was
23 1:51 p.m., about five minutes later.

24 THE COURT: All right.

25 MR. BUBAR: So those would be the two documents that

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1 we would submit in this matter, Your Honor, today.

2 THE COURT: Any objection to those, Mr. Beers?

3 MR. BEERS: Judge, we don't object on authenticity
4 grounds or anything like that. I'm not sure I understand the
5 relevance of this. They cannot bear their burden of proof on
6 obstruction. There's a standard. They can't do that, so
7 they're trying to go through the back door. So I don't think
8 it's relevant. But as far as authenticity, we have no
9 objection.

10 THE COURT: All right. The Court is going to accept
11 the exhibits and consider that with regard to all factors that
12 the Court considers in determining an appropriate sentence.
13 So while it's not provided to the Court for the purpose of an
14 enhancement, it is a part of the factual circumstances of this
15 matter. So I will accept those exhibits and I will give those
16 such consideration as I deem appropriate.

17 (Government's Exhibit Numbers 1 and 2 were marked and
18 received.)

19 THE COURT: All right. Any other documents for the
20 Court?

21 MR. BUBAR: No, Your Honor.

22 MR. BEERS: No, Your Honor.

23 THE COURT: Very well. Very well, then. Does either
24 party -- well, let me do this first: Let me go ahead and --
25 having determined the objections already to the presentence

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1 investigation report, let me note that I accept the
2 presentence investigation report prepared by Mr. Ridgeway with
3 the deletion of the plus two for the firearm enhancement.

4 And thank you, Mr. Ridgeway, for your work on that
5 report. I greatly appreciate it.

6 And then I'll go ahead and state the statutory
7 penalties for the offense.

8 The maximum possible penalty provided by law for
9 Count One is a term of imprisonment of 20 years.

10 There's a maximum fine of not more than \$1 million,
11 and the Court must impose a mandatory special assessment of
12 \$100 per count, for a total of \$100.

13 There's a mandatory term of supervised release of at
14 least three years, and that term can be longer.

15 In certain cases, restitution may be ordered, and
16 fees may be imposed to pay for incarceration and supervised
17 release.

18 And in certain cases the Court may require the
19 forfeiture of certain property to the government. But I do
20 not believe there is a forfeiture issue in this case.

21 Is that correct, Mr. Bubar?

22 MR. BUBAR: Yes, Your Honor.

23 THE COURT: Any objection, Counsel, to those
24 statutory penalties as stated?

25 MR. BUBAR: No, Your Honor.

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1 MR. BEERS: No, Your Honor.

2 THE COURT: Very well. Then I'll calculate the
3 advisory guideline range.

4 The base offense level is under 2D1.1, holding
5 Mr. Banks accountable for at least 1 kilogram but less than
6 3 kilograms of heroin. That is a 30. Two levels -- I'm
7 sorry. We're not adding any levels.

8 Mr. Bubar, I didn't ask you if you're making the
9 motion for the one-level reduction for acceptance pursuant to
10 the plea agreement?

11 MR. BUBAR: Yes, Your Honor.

12 THE COURT: All right. I will grant that motion. So
13 there's a three-level reduction for acceptance under 3E1.1.

14 So the total offense level in this case is that of
15 27.

16 Mr. Banks has numerous prior convictions, and eight
17 of those were scored under the guidelines, yielding a criminal
18 history score of 15. The convictions that were scored were
19 misdemeanor assault and battery, misdemeanor disorderly
20 conduct, misdemeanor identity theft, misdemeanor destroy
21 property, felony malicious wounding, misdemeanor drive on a
22 suspended operator's license, two instances of that, and
23 felony obstruction of justice.

24 The defendant committed the instant offense while
25 under a criminal justice sentence, and two points are added.

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1 So the resulting total is 17 points, which places him in a
2 criminal history category of VI.

3 And the advisory guideline range for an offense level
4 of 27 and criminal history category of VI is a term of
5 imprisonment of 130 to 162 months.

6 The advisory guideline range for supervised release
7 is three years.

8 And the range for a fine, did that change,
9 Mr. Ridgeway, with the change, the lower level?

10 THE PROBATION OFFICER: It did, Your Honor. It is
11 now 25,000 to 1 million.

12 THE COURT: All right. The advisory guideline range
13 for the fine is then 25,000 to \$1 million.

14 Any objection to those calculations, Counsel?

15 Mr. Bubar?

16 MR. BUBAR: No, Your Honor.

17 THE COURT: Mr. Beers?

18 MR. BEERS: No, Your Honor.

19 THE COURT: Then I'll be glad to hear any testimony,
20 receive any evidence with regard to the appropriate sentence
21 within the binding range.

22 Does either party have any testimony or other
23 evidence that the Court has not already received?

24 Mr. Bubar?

25 MR. BUBAR: We have no additional evidence, Your

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1 Honor.

2 THE COURT: All right. Mr. Beers?

3 MR. BEERS: Defense has no additional evidence.

4 Mr. Banks would like to allocute.

5 THE COURT: Certainly. And I'll give him the chance
6 to do that after I've heard argument of counsel.

7 So, Mr. Bubar, I'll be glad to hear from the United
8 States as to the appropriate sentence in this case, sir.

9 MR. BUBAR: Thank you, Your Honor.

10 The government is not going to rehash the sentencing
11 memo in total, but would like to obviously highlight just a
12 few things.

13 As we've already stated today, this is a case where
14 the defendant did some positive things once he was caught,
15 once he was charged, by pleading guilty, not requiring the
16 government to supersede the indictment against him. And he
17 agreed that he should be responsible for 1 to 3 kilograms of
18 heroin, which is, on its own, a fairly remarkable amount of
19 heroin, a good amount of distribution to other dealers,
20 dealers in the area, in the Roanoke Valley.

21 The government took that sort of cooperative posture
22 into account when it offered him the C range that it offered,
23 and credited him for that.

24 But also, I want to really make clear that the
25 defendant's actions are very severe. The evidence shows that

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1 he dealt and distributed within this area a great deal of
2 heroin over the course of years. The PSR captures this and
3 does so very well.

4 A number of witnesses came forward and stated very
5 specific ways, amounts, locations, and details about his
6 heroin drug -- his heroin distribution network. But it is
7 also worth noting that the evidence included cocaine,
8 methamphetamine, et cetera, that were not really captured or
9 taken into account in this case or in this plea agreement, but
10 are still very concerning as well. This evidence is included
11 in the PSR, I would note, without any objection by the
12 defendant.

13 This is very significant. The Court is well aware of
14 the ill effects of heroin, the scourge of heroin in Roanoke
15 and the addiction that it can lead to, the deaths that it can
16 lead to by people who use it. Meth is on the rise as well.
17 It's a very troubling situation that Mr. Banks contributed to
18 for years. Using other distributors, he supplied many others
19 with narcotics.

20 Also, as has been discussed, and even the Court today
21 already acknowledged the pretty astounding criminal history
22 that Mr. Banks comes before the Court with today. He has been
23 convicted of very many misdemeanors. But also very troubling
24 to the government is the violent malicious wounding felony
25 that is on his record where he shot another person at close

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1 range. I'll point out that he served a very, very short
2 sentence in the state system for that.

3 He also fled from police, ran over an officer's foot
4 while doing so, when the officer was trying to intervene when
5 Mr. Banks was seen by the officers assaulting a female.
6 Again, violent, violent conduct.

7 Because of all of these convictions, he was in the
8 state system and has been in and out of the state system an
9 incredible amount of time over his adult life, and has
10 obviously learned almost nothing from that, and is now before
11 Your Honor facing a very significant sentence, and rightly so.

12 He comes before the Court with support, support of
13 his family, and that's a good thing. His father has written
14 you a letter. His father has a legitimate business,
15 apparently, does have a business. Mr. Banks comes to you with
16 almost no work history of any legitimate nature.

17 But something that's worth pointing out about his
18 father's letter and his father's shop is that Mr. Banks sold,
19 if the evidence is to be believed -- and, again, it's not
20 objected to -- Mr. Banks sold out of, sold drugs, distributed
21 heroin and distributed heroin in this very case out of his
22 father's shop, and did so for a very long period of time.

23 The Court could have considered, certainly, and it
24 could have applied the enhancement for use of a dwelling. As
25 the Court is aware, a dwelling is not -- it does not have to

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1 be a physical place where someone lives, but a structure
2 that's used, co-opted to deal drugs out of. And that's
3 certainly what Mr. Banks' father's shop was and had become.
4 It was a meeting place for him to sell drugs. It was a place
5 where he stored drugs that one of the witnesses saw, and saw
6 over the course of time.

7 So it's concerning that his father's place of
8 business, while it is an auto mechanic shop, was also a place
9 that he dealt drugs and did so for a course of years. And
10 it's concerning that that facilitation happened and continued
11 to happen for a long period of time. And none of that, of
12 course, is acknowledged in his father's letter, who I'm sure
13 doesn't want to see him go to prison for very long.

14 Also, in another letter that Your Honor has received,
15 the letter from Natasha, Natasha is the person who helped
16 Mr. Banks post the threat, the threat against two people that
17 Mr. Banks thinks are witnesses against him, and helped
18 facilitate that witness intimidation that I'm also going to
19 speak about.

20 It's incredibly troubling to see Mr. Banks use others
21 to, even from jail, intimidate and threaten other individuals
22 who he thinks are witnesses against him.

23 I would ask that we turn to Government's Exhibit 1,
24 which is an e-mail that was quite clearly sent from the
25 Roanoke City Jail; it says so right at the top from Mr. Banks

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1 on February 18th, 2020. All it takes is a cursory reading,
2 and I'm not going to read the whole thing to the Court, but he
3 names a couple of different individuals who Mr. Banks
4 obviously thinks is working against him. It references going
5 to the grand jury and testifying for over an hour and wearing
6 a wire, calls these individuals very crass names, and I think
7 very chillingly at the very end, you know, instructs, "Know
8 you can't sleep, police ass bitch." And I apologize for that
9 language, Your Honor, but it says this. These are Mr. Banks'
10 words that he used to threaten and intimidate people who he
11 thought were a part of this case.

12 Troubling as that was, that was all the way back in
13 February 18th, 2020.

14 And in Exhibit 2, it shows that not a lot has changed
15 now that we're right before sentencing.

16 At the bottom of that page, on page 1, there's an
17 e-mail from Mr. Banks to another female, Ebony Saunders, and
18 it instructs her to set up a PACER account, an account with
19 the Court's website, to, "Look how much time your girl got off
20 for telling on me. They took off five years. But I want you
21 to post that after I go to court." Presumably after he's
22 sentenced, he wants this individual to post about someone who
23 he believes cooperated against him and got a sentence
24 reduction.

25 Within a matter of minutes, Ms. Saunders writes back

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1 and says, "Okay. I'm setting everything up now. It said I
2 GTA approved, get approve first. I uploaded my idea." I'm
3 not sure what all that means. But he's ready to do what he
4 wants and post about what he's asking, who he -- trying to out
5 people who he thinks are witnesses, I think quite obviously
6 for the point of intimidating them, outing them to the public.
7 If those aren't threats, calling someone a "police blank,
8 blank," and telling them they'd better know they can't sleep
9 at night, if that's not threatening, I don't know what is.

10 It's troubling conduct, it's who Mr. Banks is, it's
11 the way that he's conducted himself even after pleading
12 guilty, and it is troubling.

13 Your Honor, you're obviously charged with the 3553(a)
14 factors and establishing a punishment based upon the
15 seriousness of the case -- it's an incredibly serious case,
16 the large-scale distribution of heroin in the Roanoke
17 Valley -- providing a just punishment for that offense; the
18 history and characteristics, which we've talked about at some
19 length, which includes a lengthy and violent criminal history
20 pattern.

21 But there's also deterrence punishment, both specific
22 and general deterrence. Mr. Banks needs to specifically be
23 deterred from doing these crimes again. He hasn't been
24 deterred by the state system. His behavior has only
25 increased, I would argue.

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1 But then there's general deterrence. Anyone who's
2 tempted to distribute these narcotics, to behave violently in
3 their past, to do things like that, to continue to do it even
4 after having, you know, dozens of misdemeanor and felony
5 convictions, a strong and significant sentence would send a
6 true message that this behavior will simply not be tolerated.

7 The government asks for a sentence on the high end of
8 the mandatory range of 132 months.

9 Thank you, Your Honor.

10 THE COURT: Mr. Bubar, one question for you. With
11 regard to the e-mail in February of 2020, did the United
12 States know about that e-mail prior to entering into the plea
13 agreement?

14 MR. BUBAR: Yes, Your Honor.

15 THE COURT: All right. Thank you.

16 MR. BUBAR: Thank you very much, Your Honor.

17 THE COURT: All right. Mr. Beers, I'll be glad to
18 hear argument on behalf of Mr. Banks.

19 MR. BEERS: Thank you, Your Honor. And I want to
20 thank the Court for appointing me to represent Mr. Banks.
21 It's been a pleasure. He's been nothing but cooperative. Not
22 all of my clients are nothing but cooperative. But he's been
23 perfectly cooperative, as has his father.

24 His father owns a very legitimate business off 10th
25 Street. I've been there, Judge. In fact, I'm thinking about

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1 having my car serviced there. It's a very well-known garage,
2 auto mechanics garage in walking distance of my office.

3 So he's been a nice client and certainly comes from a
4 nice family.

5 Now, Judge, does he have a bad criminal record as
6 Mr. Bubar said? Yes. Is this a serious crime involving
7 narcotics which is a scourge in our community? Yes, all that
8 is true.

9 But he's been sentenced -- you know, the range runs
10 from eight years, Judge, on the low end, which is a lot of
11 time. So if we focus on that, which is the ultimate
12 question -- is that sufficient but not greater than necessary
13 to punish this gentleman? -- the answer is yes. That is a
14 long sentence for someone who has come in and, by everyone's
15 agreement, not played games, admitted his guilt early. That
16 is a long sentence. It's plenty of time for all the
17 congressional objectives under 3553 -- 353 to be secured and
18 obtained.

19 I mean, so I would ask the Court to consider a
20 sentence at the very low end of that range of eight years.

21 Your Honor, again, the government is trying to
22 have -- again, have it both ways with this alleged threat.
23 Since they brought it up, let me address that before the Court
24 pronounces sentence.

25 They have -- the one on February 18, which they knew

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1 about early, was never -- you know, they're trying to argue
2 it's a threat. They point to no follow-up posts or
3 communications between these two inmates.

4 When they got him detained, Judge, when the
5 government got Mr. Banks' detained, I guess they could have
6 asked for an order, "Don't communicate with any inmates,
7 including those whom you believe are cooperating witnesses
8 against you." They didn't do that. Even after this, they
9 didn't ask for a court order, because this is not a threat.
10 If it were a threat, they would have moved for the
11 enhancement. They didn't because it's not a threat, and I
12 think I outlined why it's not a threat.

13 However they're characterizing this, as behavior or a
14 sentencing guidelines enhancement, they've got a burden to
15 show that this is something other than an exercise of his
16 right to freedom of speech. His First Amendment right to
17 speak to inmates and to others is not diminished simply
18 because he's in jail. Were he on bond and ordered not to
19 speak to others, other potential witnesses, we would have a
20 different case. But he wasn't.

21 Now, he's not free to threaten anyone, I agree. But
22 there's no threat. The truth is, Judge, these two people were
23 friends for many, many years. Many, many years they played
24 pool together on Williamson Road. Mr. Bubar knows that;
25 that's in the discovery.

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1 You can tell they know each other quite well. In
2 fact, he says, "Love your bro." He is speaking to a female.
3 We all know who this is. This is a female, "Love your bro."
4 I mean, that's the tenor. They are good friends and he is
5 angry she has turned on him, that's true. But where is the
6 threat? "Love your bro. Know you can't sleep." That's
7 not -- what he's saying is I'm sure you can't sleep because
8 you know you've exaggerated and told lies about me.

9 There's nothing wrong with him expressing that
10 opinion to his friend or former friend, nothing. He's got a
11 First Amendment right to speak his mind. There's no threat.
12 He didn't say, "I'm going to get you" or anything like that.
13 He says, I'm sure your conscience won't let you sleep. That's
14 all he's doing; he's saying your subconscious is going to
15 bother you because you know you're not telling the truth. So
16 I don't understand the threat here.

17 Government's Exhibit 2, I still don't understand the
18 point. I guess they're pointing down to this e-mail where it
19 says, "I want you to get" -- to this lady friend, Ebony
20 Saunders, "I want you to get a PACER account." Again, First
21 Amendment activity. Ms. Saunders is allowed to have a PACER
22 account if she's willing to pay -- set up the PACER account.

23 He said, "I want to know" -- as I understand it, "I
24 want to know how much time this cooperator is getting off her
25 sentence because she testified against me." What is wrong

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1 with that? And he said, "After you get it, I want you to post
2 it." So he wants to know from her, because he's going to be
3 locked up, he's curious how much of a break is she really
4 going to get? I don't see a threat. I don't see any
5 inappropriate conduct here, Judge.

6 Is he angry at his former friend for, in his mind,
7 exaggerating claims against him and telling lies? Yes. But
8 that's natural. So I ask the Court to disregard that.

9 Does he use vulgar language, inappropriate language?
10 Yes. There's no question about that here. But so what?
11 That's not a threat, Judge, so I think it's a distraction.

12 What we have here is a lengthy range that begins at
13 eight years, and I think that's where the Court should end
14 this case, with a sentence of eight years. Again, I think
15 that's more than sufficient to punish this gentleman who, from
16 the beginning of this case, has not played games.

17 Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Beers.

19 Any other argument, Counsel, before we hear from
20 Mr. Banks?

21 MR. BUBAR: Sorry. Your Honor, I was just simply
22 going to say that I neglected to point out in the middle of
23 the first post there's a reference to the government
24 protecting their snitches. And, of course, he calls this
25 person a "police ass bitch" at the very end of the message.

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1 And in the second, he talks about posting it, which very much
2 means posting it on Facebook from the government's
3 perspective. Thank you, Your Honor.

4 MR. BEERS: And --

5 THE COURT: Go ahead, Mr. Beers.

6 MR. BEERS: I would like to point out that they
7 haven't brought the cooperating witness to testify that the
8 cooperating witness felt threatened in any way. There's no
9 evidence of that.

10 Anyway, thank you, Your Honor.

11 THE DEFENDANT: Judge, may I use the restroom?

12 THE COURT: Mr. Banks, I'm going to give you an
13 opportunity to speak right now. But before I do that, is
14 there anything you need to speak with Mr. Beers about
15 confidentially?

16 THE DEFENDANT: Yes, can I take a short break and use
17 the restroom, please?

18 THE COURT: Oh, okay. All right. Certainly. If we
19 can get the deputy there, get the attention of the deputy
20 there to give you a restroom break, then when we come back,
21 Mr. Banks, it will be your turn to say whatever you want to
22 say.

23 THE DEFENDANT: Okay. Thank you.

24 (Recess taken from 11:56 a.m. to 11:59 a.m.)

25 THE DEFENDANT: Sorry about that.

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1 THE COURT: All right. Let's wait for the U.S.
2 attorney to start the video back up. There we go.

3 All right, Mr. Banks, now is your opportunity to tell
4 me anything you would like to say in mitigation of your
5 sentence, sir. You may tell me whatever you want me to know
6 before I impose your sentence.

7 THE DEFENDANT: I would like to basically apologize
8 to the courts again, like I did in my letter. I said all the
9 things that I did; they were wrong. And that's not going to
10 be the person I am when I get out of rehabilitating myself
11 after prison, taking up my trades, obtaining my GED and things
12 like that.

13 I mean, a lot of this stuff I did out of anger, like
14 Mr. Beers pointed out on the e-mail and stuff, but it was
15 never a threat to anybody. I never would want no harm to come
16 to no one. Basically, when I come, when I come back to
17 society, I'll be a different person.

18 That's all I have to say, Your Honor. Thank you for
19 your time.

20 THE COURT: Thank you, sir. Okay.

21 After calculating the guidelines, determining the
22 objections, and reviewing all the evidence that was submitted
23 to the Court, and the letters that were submitted, and having
24 accepted the binding plea agreement, and having heard argument
25 and heard from Mr. Banks, I must consider the relevant factors

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1 set out by Congress at Title 18, United States Code, Section
2 3553(a), and ensure that I impose a sentence that is
3 sufficient but not greater than necessary to comply with the
4 purposes of sentencing.

5 The purposes include the need for the sentence to
6 reflect the seriousness of the crime, promote respect for the
7 law, and provide just punishment for the offense. The
8 sentence should also deter criminal conduct, protect the
9 public, and promote rehabilitation.

10 In addition to the guidelines and policy statements,
11 I consider -- and, of course, the binding plea range in this
12 case, I consider the nature and circumstances of the offense,
13 Mr. Banks' history and characteristics, the need to avoid
14 unwarranted sentence disparities among similarly situated
15 defendants, and the types of sentences available.

16 And taking all of these factors and the binding plea
17 agreement into account, and the advisory guideline range into
18 account, I believe an appropriate sentence in this case is
19 that of 132 months, with a supervised release term of three
20 years, a \$200 fine, and the mandatory \$100 special assessment.

21 And the reasons for this sentence are as follows: I
22 note that Mr. Banks committed a serious offense, and his plea
23 agreement accounts for even larger amounts of drugs that he
24 brought into the community. I find those drug offenses to be
25 serious, the amount of drugs to be serious. I note that he

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1 admits to engaging in this conduct for at least two years.
2 And it appears to the Court he was engaging in that -- he's
3 not a substance abuser of those substances in any event, so it
4 appears he was engaging in that conduct for profit.

5 And I note, especially given his previous egregious
6 criminal history and lifetime criminal history, and his
7 involvement in violence and drugs -- violence and guns in the
8 past, that while he was not -- he's not charged with using
9 firearms in this offense, and he's not charged with violence
10 in this offense, but he has a history of that. And I note
11 that the combination of all of those things is very, very
12 dangerous to the community, and the Court takes that very
13 seriously.

14 I find, given his criminal history, that there is a
15 need, an especially high need in this case, and the reason for
16 the high end of the range, to deter him, to punish him, to
17 promote respect for the law, and to protect the public.

18 I note that he did write me a letter, which I read,
19 and he asked -- he told me about his desire to rehabilitate
20 himself and go back into society and live a crime-free life.
21 I note that he's an abuser of alcohol, and I note that he has
22 the support of his family.

23 But I am very troubled -- I know that initial e-mail
24 in February was pre-plea agreement, so the government could
25 have considered that easily in the plea agreement itself. But

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1 I have to admit that any credibility he had with this Court in
2 the letter he wrote to me, and what he's told me today, is
3 substantially discounted by the e-mail he sent on
4 October 10th, 2020, this month, this month, seeking to expose
5 persons who he believes testified against him, and noting,
6 "Post after I go to court." So "I don't want this to affect,
7 perhaps, what the Court does with me. I, perhaps, want to
8 pull the wool over the Court's eyes."

9 And so given that conduct, the Court discounts the
10 sincerity with which he desires to rehabilitate himself. And
11 so for all of those reasons, I believe a sentence of 132
12 months is appropriate.

13 Do the parties have any objection to the procedure by
14 which the Court determined the sentence?

15 Mr. Bubar?

16 MR. BUBAR: No, Your Honor.

17 THE COURT: Mr. Beers?

18 MR. BEERS: No, Your Honor.

19 THE COURT: Do you know of any reason, other than the
20 reasons already argued, why the sentence should not be imposed
21 as stated, Mr. Bubar?

22 MR. BUBAR: No, Your Honor.

23 THE COURT: Mr. Beers?

24 MR. BEERS: No, Your Honor.

25 THE COURT: Then pursuant to the Sentencing Reform

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1 Act of 1984, and having considered the factors noted in Title
2 18, United States Code, Section 3553(a), and after having
3 consulted the advisory guideline, and being bound by the
4 binding range in the plea agreement, it is the judgment of the
5 Court that the defendant, James Robert Banks, is hereby
6 committed to the custody of the Bureau of Prisons to be
7 imprisoned for a total term of 132 months.

8 I will recommend to the Bureau of Prisons that you
9 receive appropriate substance abuse treatment while you're
10 incarcerated for your alcohol abuse problem. Is there a
11 request for placement, Mr. Beers?

12 MR. BEERS: Petersburg, Your Honor.

13 THE COURT: Petersburg? And the reason for that?

14 MR. BEERS: Proximity. He's from Roanoke.

15 THE COURT: Okay.

16 MR. BEERS: Beckley would also be an option.

17 THE COURT: I'll recommend Petersburg first and then
18 Beckley thereafter, so you can be close to your family.

19 I noted that there was some desire to receive some
20 vocational training in plumbing or electrical. That would be,
21 perhaps, McDowell or Cumberland.

22 Is it still Petersburg or Beckley the desired
23 location, Mr. Beers?

24 MR. BEERS: I think so, Judge, yes.

25 THE COURT: Then I'll make that recommendation. Of

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1 course, I can't control that, but I'll make the
2 recommendation.

3 And upon release from imprisonment, Mr. Banks shall
4 be on supervised release for a term of three years. He must
5 report to the probation office in the district to which he is
6 released within 72 hours of release from the custody of the
7 Bureau of Prisons, and he must comply with the following
8 mandatory conditions of supervision.

9 Mr. Banks, you must not commit another federal,
10 state, or local crime, you must not unlawfully possess a
11 controlled substance, and you shall refrain from any unlawful
12 use of a controlled substance.

13 You must submit to one drug test within 15 days of
14 release from imprisonment, and at least two periodic drug
15 tests thereafter as determined by the Court.

16 You must not possess a firearm, ammunition,
17 destructive device, or dangerous weapon.

18 You must cooperate in the collection of DNA as
19 directed by the probation officer.

20 You also must comply with the standard conditions of
21 supervision that have been adopted by this Court, as well as
22 the following special conditions:

23 Following release from imprisonment, the Court will
24 evaluate your status and determine whether after-incarceration
25 substance abuse rehabilitation is necessary and appropriate.

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1 And if deemed appropriate, you shall participate in a program,
2 as designated by the Court upon consultation with the
3 probation officer, until such time as you have satisfied all
4 the requirements of the program.

5 You shall reside in a residence free of firearms,
6 ammunition, destructive devices, and dangerous weapons.

7 And you shall submit your person, property, house,
8 residence, vehicle, papers, or office to a search conducted by
9 an United States probation officer. Failure to submit to a
10 search may be grounds for revocation of your release.

11 And you shall warn any other occupants that the
12 premises may be subject to searches pursuant to this
13 condition.

14 An officer may conduct a search pursuant to this
15 condition only when reasonable suspicion exists that you have
16 violated a condition of your supervision and that the areas to
17 be searched contain evidence of this violation.

18 It's ordered that you pay to the United States a
19 special assessment of \$100, which is due and payable
20 immediately.

21 And it's further ordered that you pay to the United
22 States a fine of \$200. That is below the guideline range
23 because I find that you don't have the ability to pay a
24 guideline fine.

25 I'm also going to waive interest on that fine.

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1 And having assessed your ability to pay, the total
2 criminal monetary penalties are due immediately and payable as
3 follows: The \$100 special assessment is payable immediately.
4 The \$200 fine can be paid during the term of imprisonment.

5 Payment shall be made in equal monthly installments
6 of \$25, or 50 percent of your income, whichever is greater, to
7 commence 60 days after the date of this judgment. And payment
8 in equal monthly installments of \$25 during the term of
9 supervised release, to commence 60 days after release from
10 imprisonment.

11 Is there a government -- does the government have a
12 motion, pursuant to the plea agreement, to dismiss Count Two
13 of the indictment, Mr. Bubar?

14 MR. BUBAR: Yes, Your Honor. We would ask that you
15 do that, please.

16 THE COURT: I'll grant that motion and dismiss Count
17 Two of the indictment.

18 I note, Mr. Banks, that you have waived the right to
19 appeal your sentence, and that waiver is binding unless the
20 sentence exceeds a statutory maximum or is based on a
21 constitutionally impermissible factor. And if you undertake
22 to appeal despite your waiver, you may lose the benefits of
23 your plea agreement.

24 If a right of appeal does exist and you're unable to
25 pay the cost of an appeal, sir, you may apply for leave to

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1 appeal without prepayment of that cost.

2 And any notice of appeal must be filed within 14 days
3 of entry of the judgment or within 14 days of a notice of
4 appeal filed by the government. And if requested, Mr. Banks,
5 the clerk will prepare and file a notice of appeal on your
6 behalf.

7 Mr. Banks, you are fortunate to have the support of
8 family members and friends in this case. And I'm told by
9 those people that you are a good father to your children, and
10 I would suggest to you, Mr. Banks, that, regardless of your
11 incarceration, you can continue to be a good father to your
12 children, you can continue to support them, you can contact
13 them, you can also continue to be a good son to your father
14 and be supportive to those people who love and care about you,
15 sir. And I hope they are supportive of you.

16 And, Mr. Banks, I -- while I told you I doubt -- I
17 have reason to doubt the sincerity of what you told me in your
18 letter, I do hope that you have a desire to turn your life
19 around and to lead a crime-free life from here on out.

20 I hope that you do want to be rehabilitated, you do
21 want to stop abusing alcohol, which appears to have caused
22 some of your criminal background, in any event. But you are
23 going to have to want that for yourself, Mr. Banks. Other
24 people wanting it for you doesn't do the trick. You're going
25 to have to dedicate yourself to that if that's what you want

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1 to do. And you're going to have to hang out with people that
2 don't commit crimes and support you in being sober.

3 And, Mr. Banks, I always end my sentencings with a
4 quote, and I have two quotes for you. One is by Sophocles,
5 and he said, "It is a painful thing to look at your own
6 trouble and know that you yourself and no one else has made
7 it."

8 And the second is by a motivational speaker named
9 Dennis Waitley. And he said, "A sign of wisdom and maturity
10 is when you come to terms with the realization that your
11 decisions cause your rewards and consequences. You are
12 responsible for your life, and your ultimate success depends
13 on the choices you make."

14 So, Mr. Banks, I hope you can make those good choices
15 going forward. I will remind you that when you are on
16 supervised release, the probation office is there to assist
17 you. So if you find yourself in need of programs to help you,
18 to help you be successful in a crime-free, sober life, I want
19 you to reach out to the probation office and ask for help.
20 And I do wish you the greatest success, sir.

21 Is there anything else we need to take up in this
22 case today, Counsel?

23 Mr. Bubar?

24 MR. BUBAR: No, Your Honor. Thank you.

25 THE COURT: Mr. Beers?

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1 MR. BEERS: No, Your Honor. Thank you.

2 THE COURT: Mr. Ridgeway, anything I missed?

3 THE PROBATION OFFICER: No, Your Honor.

4 THE COURT: Very well. Then Mr. Banks is remanded to
5 the custody of the United States Marshal, and we are in
6 recess.

7 Thank you, everyone. And stay well, everyone.

8 MR. BEERS: Thank you, Your Honor.

9 MR. BUBAR: Thank you, Your Honor.

10 THE DEFENDANT: Thank you, Mr. Beers.

11 (Court recessed at 12:12 p.m.)

12 CERTIFICATE

13 I, Judy K. Webb, certify that the foregoing is a
14 correct transcript from the record of proceedings in
15 the above-entitled matter.

16

17 /s/ Judy K. Webb

Date: 3/31/2021

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